S.B.CIVIL MISC. APPEAL NO.95/1991
(Jamali & others Vs. Contractor Ismailji & others)

Date of order : 03.07.2006

**HON'BLE MR.JUSTICE DINESH MAHESHWARI**

None present for the appellants
Mr.U.C.S.Singhvi for the respondent No.4

Though this is a Civil Misc. Appeal of the year 1991 concerning a Motor Accidents Claims case, nobody is present for the appellants-claimants. The award in question was made on 28.11.1990 in the claim case filed in the year 1983. In this view of the matter, though counsel for the appellants is not present, record has been examined and learned counsel for the respondent No.4 has been heard.

The claim in question was made by the appellants seeking compensation on account of the death of one Abdul Hakim in an accident involving a truck bearing registration No.RJE 2115 near Bar when the vehicle in question, in which the deceased Abdul Hakim was travelling as a second driver, hit against a tree. The Tribunal consolidated the trial of two claim cases, one of the present appellants and another of Smt.Shanti Devi & others for the death of the driver of truck Mangal Singh, and framed the following issues for determination of the questions involved in the case:-

(1)क्या दिनांक 15-6-82 को ट्रक आर०जे०ई० 2115 अप्रार्थी संख्या 1 इस्माईल एवं अप्रार्थी संख्या 3 व 4 रामचन्द्र व सलीम मोहम्मद के स्वामित्व में था और मंगलसिंह मृतक एवं अब्दुलहकीम मृतक दोनों बतौर ड्राईवर उक्त अप्रार्थीगण के नियोजन में थे और दिनांक 15-6-82 को मृतक मंगलसिंह ने उक्त ट्रक को बर से रायपुर जाने वाली सड़क पर गफलत एवं लापरवाही से अथवा सामने से आ रही दूसरी ट्रक यक साईकल सवार को बचाने की कोशिश में पेड़ से टकराकर दुर्घटना कारित कर दी जिसके फलस्वरूप चालक मंगलसिंह तथा उसमें बैठे हुये दूसरे चालक अब्दुलहकीम की मृत्यु हो गई ?

(2) क्या प्रकरण संख्या 38/83 के प्रार्थीगण श्रीमती शांतिदेवी आदि अप्रार्थीगण से 350000/- रूपये प्रतिकर एवं क्षतिपूर्ति प्राप्त करने के अधिकारी है, यदि है तो किससे कितना ?

(3) क्या प्रकरण सं० 45/83 के प्रार्थीगण जमीली वगैरह अप्रार्थीगण से 500000/- रूपये प्रतिकर एवं क्षतिपूर्ति के रूप में पाने के अधिकारी है और यदि है तो किस अप्रार्थी से कितना ?

(4) क्या उक्त दुर्घटना के समय वाहन आर०जे०ई० 2115 अप्रार्थीगण संख्या 1, 3 व 4 ने अन्य किसी को हस्तान्तरित कर दी थी, इसलिये प्रार्थीगण बीमा कम्पनी से कोई क्षतिपूर्ति नहीं पा सकते और उक्त वाहन चालक मंगलसिंह के पास वैध लाईसेन्स नहीं होने के कारण भी बीमा कंपनी को कोई दायित्व नहीं है ?

(5) अनुतोष क्या होगा ?

After evidence of the parties, learned Tribunal proceeded to determine the issues and on issue No.1 held that deceased Mangal Singh and Abdul Hakim were in the employment of non-applicants and on 15.06.1982 the accident occurred when the truck hit against a tree while trying to save a bullock cart resulting in death of driver Mangal Singh and the second driver Abdul Hakim; and that the vehicle was insured with the respondent-insurer. Issue No.4 was decided against the insurer with the observation that the insurer had

failed to establish that the vehicle was transferred at the time of accident; and with the finding that its driver Mangal Singh held a valid driving licence. On issues No.2 and 3, learned Judge proceeded to consider the contention of counsel for the insurer that liability of the insurer was limited in a sum of Rs.50,000/- under the policy and thereafter held that in each of the claim application the claimants were entitled to a sum of Rs.50,000/- as compensation.

A bare look at the impugned award dated 28.11.1990 makes it apparent that learned Judge, Motor Accidents Claims Tribunal, Pali has totally failed to address to the requirements of law while quantifying the compensation; and after dealing with the submissions about the extent of liability of the insurer has proceeded to award Rs.50,000/- in each of the claim case without even looking at the essentials like that of income of the deceased, dependency of the claimants, reasonable multiplier to be applied and reasonable amount to be allowed towards non-pecuniary compensation too. The award dated 28.11.1990 having been made in total disregard of the requirements of law cannot be sustained and deserves to be set aside. Although it remains an old matter but no findings on relevant aspects having been recorded by the learned Judge of the Tribunal, in the interest of justice it is considered appropriate to set aside the impugned award and to remand the matter to the Motor Accidents Claims Tribunal, Pali to decide the claim application afresh in accordance with law after hearing the parties.

As a result of the aforesaid, the impugned award dated 28.11.1990 is set aside and the matter stands remanded to the Motor Accidents Claims Tribunal, Pali for restoring Claim Case No.45/1983 to its original number and to decide the same in accordance with law after hearing the parties.

As nobody has appeared for the appellants, initial date of appearance before the Tribunal is fixed on 11.08.2006; and if no appearance is put on behalf of the claimants on that date, the Tribunal shall notify the claimants and thereafter proceed with the matter in accordance with law. Costs of this appeal shall follow the final result of Claim Case No.45/1983.

(DINESH MAHESHWARI),J.

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